IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 962 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ZAKIRHUSSAIN PIRBAKSH SHEIKH

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR HL JANI ASSTT GOVT PLEADER for Respondent No. 1

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 14/06/2001

ORAL JUDGEMENT

#. Heard Mr.H.R.Prajapati, learned advocate appearing on behalf of the petitioner and Mr.H.L.Jani, learned AGP appearing on behalf of the respondent No.1 to 3 - State and Ms.P.J.Dawawala, learned advocate for

respondent No. 4.

#. In the present petition, the petitioner has challenged the detention order dated 12th September, 2000 passed under the PBM Act, which is actually executed on the present petitioner on 6th January, 2001 as per the averments made in the ground [k] on page-8 by the petitioner. The respondent - State has filed affidavit-in -reply on 11th April, 2001 through one Mr.P.G.Vyas, Deputy Secretary to the Government of Gujarat, Food, Civil Supply and Consumer Affairs Department. The respondent - State has also filed another affidavit-in-reply through the District Magistrate Shri K.Srinivas dated 12th April, 2001. On behalf of the respondent No.4, one Mr.S.L.Meena, Under Secretary in the Department of Consumer Affairs, Ministry of Consumer Affairs and Food and Public Distribution, New Delhi has also filed affidavit dated 17th April, 2001. All these affidavits are on record.

#. The learned advocate Mr.H.R.Prajapati has submitted that in the present petition, the order of detention has been challenged by the petitioner on various grounds but one contention is enough to vitiate the order of detention. Therefore, Mr.H.R.Prajapati, learned advocate has submitted that representation dated 22nd January, 2001 - page-29 - Annexure-C submitted by wife of the petitioner to the respondent No.4 which received by the respondent No.4 on 24th January, 2001 and an acknowledgment to that effect has been placed on record on page 31. Mr.Prajapati, learned advocate has also submitted that the representation dated 22nd January, 2001 has been decided by the respondent No.4 on 13th March, 2001 and therefore there is delay in deciding the representation of the petitioner by the respondent No.4 and the respondent No.4 has not explained the delay in affidavit-in-reply. Therefore, in absence of the explanation of delay, representation has not been decided by the respondent No.4 immediately and hence, on that ground, the detention order is required to be vitiated. In support of his contention, he relied upon the decision of the Apex Court in case of RAJAMAL vs. STATE OF TAMIL NADU reported in AIR 1999 Supreme Court page 684. Mr.Prajapati has also relied upon the observations made by the Apex Court in para-8 and 9.

#. Mr.H.L.Jani, learned AGP appearing on behalf of the respondent - State has submitted that there is no delay by the State Government in considering the representation of the petitioner but there was some delay on the part of the respondent No.4 and while justifying his contention,

he submitted that the representation submitted by the wife of the petitioner dated 22nd January, 2001 addressed to the Respondent No.4 which has been received by the Central Government on 24th January, 2001 and thereafter on 1st March, 2001, the Central Government - Respondent No.4 has sent the said representation to the State Government for calling remarks and also requested to translate the said representation which was in fact in Gujarati. After receiving the said representation for remarks and translation, immediately the State Government has sent back the said representation along with remarks and translation to the Central Government on 8th March, 2001. The State Government has received the representation from the Central Government on 7th March, 2001. Thereafter, the Central Government has received the said representation with remarks and translation from State Government on 12th March, 2001 and on 13th March, 2001 the Central Government has rejected the said representation of the present petitioner. These facts are not disputed between the parties and to that effect the respondent No.4 has filed affidavit before this Court but respondent No.4 has not explained the delay from 24th January, 2001 to 1st March, 2001 i.e. delay of more than one month. In affidavit-in-reply filed by the respondent No.4, no explanation has been given why representation submitted by the wife of the present petitioner dated 22nd January, 2001 which was received by the Central Government on 24th January, 2001 and from 24th January, 2001 till 1st March, 2001 why the said representation remained with the Central Government and no effective steps have been taken by the Central Government and as such no explanation has been given by the respondent No.4 so, admittedly, there was delay in deciding the representation filed by the wife of the present petitioner about more than one month by the Central Government - Respondent No.4.

#. Learned advocate Ms.P.J.Dawawala appearing on behalf of the respondent No.4 has also not been able to justify the stand of the Central Government and she is also not able to explain as to why the Central Government has remained inactive when the Central Government has received the representation on 24th January, 2001 till 1st March, 2001. In light of these facts, which remained undisputed between the parties and considering the observations made by the Apex Court in case of RAJAMAL, the Apex Court has observed that " there is no period prescribed either under the Constitution or under the concerned detention law within which the representation should be dealt with. The requirement, however, is that there should not be supine in difference, slackness or

callous attitude in considering the representation. Any unexplained delay in disposal of the representation would be a breach of constitutional imperative and it would render the continued detention impermissible and illegal. After this observation in para-9, the Apex Court has further observed that the position therefore now is that if delay was caused on account of any indifference or lapse in considering the representation, such delay will adversely affect the further detention of the prisoner. In other words, it is for the authority concerned to explained the delay if any, in disposing the representation. It is not enough to say that delay was very short. Even longer delay can as well be explained, so days is not the duration or range of delay but how it is explained by the authority concerned."

#. In light of above observations of the Apex Court and considering the undisputed facts before this Court in the present case that representation dated 22nd January, 2001 submitted by the wife of the present petitioner which was received by the respondent No.4 on 24th January, 2001 which remained with Central Government without any effective steps and meanwhile, the Central Government has not taken any effective steps for deciding the representation of the present petitioner and on 1st March, 2001 the said representation was sent to the State Government by the Central Government calling remarks and requested for translation of the representation which was in fact in Gujarati. So during the period from 24th January, 2001 to 1st March, 2001 no effective steps have been taken by the Central Government in respect of deciding the representation of the petitioner and such delay which is admittedly more than one month, no explanation has been given by the respondent No.4 in his affidavit and therefore considering this aspect, according to my opinion, more than one month delay is sufficient to vitiate the order and therefore the order of detention dated 12th September, 2000 actually executed on 6th January, 2001 is hereby quashed and set aside.

#. In the result, for the reasons recorded in the oral judgment, the petition succeeds and the same is allowed. The order of detention dated 12th September, 2000 in fact executed on 6th January, 2001 is vitiated and resulted to quash and set aside. The detenu - ZAKIRHUSSAIN PIRBAKSH SHEIKH who has been detained at Porbandar Jail as Class-II prisoner be set at liberty forthwith if he is not required in any other case. Rule is made absolute accordingly. No order as to costs. Direct Service is permitted.

Date : 14/6/2001 [H.K.Rathod, J.]

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